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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket Nos. 120709225-2365-01 and 100812345-2142-03]

RIN 0648-XC367

Snapper-Grouper Fishery of the South Atlantic; Reopening of the Commercial Harvest of Red Snapper and Gray Triggerfish in the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reopening.

SUMMARY: NMFS reopens the 2012 commercial sector for red snapper and gray triggerfish in the South Atlantic exclusive economic zone (EEZ). NMFS previously determined the commercial annual catch limits (ACLs) for gray triggerfish and red snapper had been reached, and closed the commercial sector for gray triggerfish at 12:01 a.m., local time, on September 11, 2012 and the commercial sector for red snapper at 12:01 a.m., local time, on November 21, 2012. However, updated landings estimates indicate the commercial ACLs for red snapper and gray triggerfish have not been reached at this time. Therefore, NMFS is reopening the commercial sector for red snapper and gray

triggerfish in the South Atlantic at 12:01 a.m., on December 12, 2012. These species will remain open until 12:01 a.m. on December 19, 2012. The intended effect of this temporary rule is to maximize harvest benefits for commercial red snapper and gray triggerfish fishermen. Additionally, this reopening for red snapper provides an opportunity to collect fishery-dependent data that could be useful for the 2014 red snapper stock assessment.

DATES: This temporary rule is effective 12:01 a.m., local time, December 12, 2012, until 12:01 a.m., local time, December 19, 2012.

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SUPPLEMENTARY INFORMATION: NMFS and the South Atlantic Fishery Management Council (Council) manage South Atlantic snapper-grouper including red snapper and gray triggerfish under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Red Snapper

NMFS implemented emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012 (77 FR 51939, August 28, 2012). Through the emergency rule, NMFS implemented an ACL of 20,818 lb (9,443 kg), gutted weight, for the commercial sector. A commercial trip limit of 50 lb (22.7-kg), gutted weight, no size limit, and a 7-day commercial fishing season were implemented to constrain harvest to the ACL. The commercial fishing season opened at 12:01 a.m., local time, September 17, 2012, and closed at 12:01 a.m., local time, September 24, 2012. The Southeast Fisheries Science Center (SEFSC) monitored commercial landings during the 7-day season to determine whether the commercial ACL had been harvested. The AMs specified in 50 CFR 622.49(b)(25)(i) state that if the SEFSC determines the ACL has not been harvested during the 7-day season, the Regional Administrator may reopen the commercial sector for an additional limited time. The SEFSC determined that the ACL was not harvested during the first 7-day season, therefore, NMFS published a temporary rule on November 15, 2012 (77 FR 68071), and reopened the commercial sector for red snapper at 12:01 a.m., on November 13, 2012, and closed it at 12:01 a.m., on November 21, 2012. However, the SEFSC determined that the ACL was not harvested during the November reopening, therefore, NMFS

is reopening the commercial sector for red snapper at 12:01 a.m., on December 12, 2012, and closing it at 12:01 a.m., on December 19, 2012. During the reopening, harvest will again be limited to the 50-lb (22.7-kg), gutted weight, daily trip limit and there will be no size limit.

After the commercial sector closes, an operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having red snapper onboard must have landed and bartered, traded or sold such red snapper prior to 12:01 a.m., local time, December 19, 2012. During the closure, all sale or purchase of red snapper is prohibited and, because the recreational sector is also closed, the bag and possession limit of red snapper is zero. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, i.e., in state or Federal waters. The prohibition on sale or purchase does not apply to the sale or purchase of red snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, December 19, 2012, and were held in cold storage by a dealer or processor.

Gray Triggerfish

NMFS determined that the commercial ACL of 305,262 lb (138,465 kg), round weight, for gray triggerfish was reached and published a temporary rule on September 4, 2012 (77 FR 53776), to close gray triggerfish on September 11, 2012. However, since that closure, the SEFSC has received additional landings data and has determined that the ACL was not harvested prior to September 11, 2012. Therefore, in accordance with 50 CFR 622.43(c), NMFS is reopening the commercial sector for gray triggerfish beginning at 12:01 a.m., on December 12, 2012, and closing at 12:01 a.m., on December 19, 2012.

After the commercial sector closes, all sale or purchase of gray triggerfish is prohibited and harvest or possession of gray triggerfish in or from the South Atlantic EEZ is limited to the bag and possession limit, as specified at 50 CFR 622.39(d)(1) and (d)(2). During the closure, the bag and possession limits and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where the fish were harvested, i.e., in state or Federal waters. The commercial sector for gray triggerfish will reopen on January 1, 2013, the beginning of the 2013 commercial fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic red snapper and gray triggerfish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.49(b)(25)(i) and 50 CFR 622.43(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary and contrary to the public interest regarding red snapper because the commercial ACL and AMs for red snapper were established in emergency rulemaking to allow for the limited harvest and possession of red snapper in 2012 (77 FR 51939, August 28, 2012), and the AMs allow the Regional Administrator to reopen the commercial sector if the ACL has been determined to have not been reached during the first 7-day commercial season. NMFS previously determined the commercial ACL for red snapper would be reached by November 21, 2012, and

closed the commercial sector for red snapper in the South Atlantic at 12:01 a.m., local time, on November 21, 2012. However, updated landings estimates indicate the commercial ACL for red snapper has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. Such procedures are unnecessary and contrary to the public interest regarding gray triggerfish because NMFS previously determined the commercial ACL for gray triggerfish would be reached by September 11, 2012, and therefore, closed the commercial sector for gray triggerfish in the South Atlantic at 12:01 a.m., local time, on September 11, 2012. However, updated landings estimates indicate the commercial ACL for gray triggerfish has not been reached at this time, and therefore additional harvest is available in order to achieve optimum yield. All that remains is to notify the public that additional harvest is available under the established ACLs and, therefore, the commercial sector for red snapper and gray triggerfish will reopen.

Additionally, reopening the commercial sector for red snapper and gray triggerfish will likely result in revenue increases to commercial vessels. Fishermen will be able to keep the red snapper and gray triggerfish that they are currently required to discard. Additionally, reopening the commercial

sector for red snapper will provide an opportunity to collect fishery-dependent data that will likely be useful for the 2014 red snapper stock assessment. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of reopening the commercial sector for red snapper and gray triggerfish in the 2012 fishing year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: December 6, 2012

Emily H. Menashes,
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